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In the Supreme Court of the United States

OCTOBER TERM, 1963

NO. 895

BOB AND DOROTHY LEE HINDES, PETITIONERS

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT OF APPEALS FOR THE FIFTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1963

NO._____

BOB AND DOROTHY LEE HINDES, PETITIONERS

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioners pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above-entitled cause on January 7, 1964.

OPINION BELOW

The opinion of the United States District Court for the Western District of Texas (R. 86-87) is reported in 214 F. Supp. 583. The judgment of the United States Circuit Court of Appeals for the Fifth Circuit (R. 211-216) has not yet been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 7, 1964. (R. 211-216). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Where taxpayers had a choice of selling a ranch for cash or on the installment plan, can the Internal Revenue Service and the lower courts compel taxpayers to accept the cash offer?

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, **infra,** pp. 8-9.

STATEMENT

The facts, as found by the District Court (R. 83-86), are not entirely correct. In the early part of 1957, the husband was offered $300,000.00 in cash for a ranch that he and his wife owned and on which they were living. (R. 19). The husband then called on his attorney to learn what the tax consequences would be if he sold the ranch for $300,900.00 cash. (R. 19). Upon being told of the tax consequences, the husband stated that he would not sell. (R. 19). His attorney then suggested that he sell on the installment plan. The husband then informed his attorney that the would-be purchaser had received $300,000.00 from an involuntary conversion and had to reinvest the money in real estate to defer taxation on the profits realized from the involuntary conversion. (R. 19). The attorney then suggested that he would form a corporation and have the corporation purchase the ranch for $265,000.00 payable in ten annual installments. (R. 19). This proposal was accepted. (R. 19).

Some time after the conference with his attorney the husband executed a sales contract with one

Sechris, the man who had offered $300,000.00 for the ranch (R. 79-80).

Upon learning of the execution of the sales contract with Sechrist, the husband's attorney and the husband called on Sechrist in Kerrville, Texas, and secured a release of the sales contract. (R. 19-20).

On the 12th day of June, 1957, taxpayers conveyed the property in question to the Tower Farm & Cattle Company, Inc., for the consideration of $265,000.00, less the amount of a note and interest thereon owing to the Equitable Life Assurance Society of the United States. (R. 20). The net amount receivable by taxpayers after paying said loan and expenses of sale was $206,197.85, for which the Tower Farm & Cattle Company, Inc., executed a note payable to taxpayers in ten annual installments of $20,619.78 each. (R. 20). Thirty days later, the Tower Farm & Cattle Company, Inc., sold the ranch to Sechrist for $300,000.00 cash.

When taxpayers filed their 1957 income tax return, they elected to report the profit from the sale on the installment plan. (R. 20).

On July 17, 1957, the husband borrowed $200,000.00 from the Tower Farm & Cattle Company, Inc., executing a note therefore payable on or before five years from date. (R. 42). Said note was paid in full within the time specified. (R. 21).

Upon examination of petitioners' 1957 income tax return, the examining officer treated the sale as a closed transaction because of the sales con-

tract with Sechrist and the loan from the corporation. (R. 21).

Taxpayers appealed the examining officer's proposed adjustment to the Regional Commissioner's Office in Houston, Texas. That office treated the sale of the ranch as a closed transaction, but computed the profit on a selling price of $300,000.00. (R. 59). Taxpayers paid the deficiency with interest thereon proposed by the Regional Commissioner's Office; filed a timely claim for refund of a portion of the deficiency; brought suit on the rejected claim in the District Court; then filed a motion for partial summary judgment. The defendant did not controvert plaintiffs' motion but filed a cross-motion for summary judgment which the District Court granted. (R. 78, 86, 87).

Taxpayers appealed to the Fifth Circuit Court of Appeals which reversed the judgment of the District Court but held that the sale of the ranch was a closed transaction. (R. 211-216).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred in holding that a summary judgment to the extent of the $265,000.00 would be in order on remand.

REASONS FOR GRANTING THE WRIT

The District Court and the Circuit Court of Appeals have held, in effect, that a taxpayer may not sell property on the installment plan if he has an opportunity to sell for cash, thus rendering null and void an act of the Congress. Title 26 USCA, Section 453. In so holding, both Courts have placed

the wrong construction of this Court's holding in **Commissioner** v. **Court Holding Co.**, 324 U.S. 331. The **Court Holding Co.** case, supra, is not in point. And, if it were in point, that holding has been nullified by 26 USCA, Section 337, infra. In the **Court Holding Co.** case, supra, decided by this Court on March 12, 1945, a corporation negotiated with a purchaser to sell its sole asset, an apartment house. The corporation then dissolved and transferred the apartment house to its two stockholders as a liquidating dividend. The stockholders then sold the apartment house to the purchaser. The Tax Court held that the sale had been made by the corporation and this Court affirmed the decision of the Tax Court. In the **Court Holding Case**, supra, the corporation was the alter ego of the stockholders. In the instant case the petitioners had no interest in the corporation. It is true that the husband's parents owned fifty per cent of the Tower Farm & Cattle Company's stock, but since when has a child been taxed on the income of its parents?

Did the lower Courts base their decisions on the fact that the Tower Farm & Cattle Company loaned the husband $200,000.00? If so, then the petitioners received all of the sale price in 1957, since the net sales price to the petitioners was $206,197.85, (R. 21), and the corporation paid the first installment of $20,619.78 in the year 1957, and what is the status of the three installments still owing to petitioners. And what is the status of the interest that has been paid to petitioners since the decision of the District Court, and the

interest that will be paid to petitioners in the future?

Did the lower Courts base their decisions on the fact that the husband had entered into a sales contract with Sechrist before petitioners sold the ranch to the corporation? Each member of this Court knows that an executory contract may be cancelled by agreement of the parties thereto, and the writer will not insult the intelligence of the Court by citing cases in support of this point. The agreement between the husband and the corporation was not enforceable because it was an oral contract for sale of real estate. After Sechrist released the husband from the sales contract, the oral agreement between Sechrist and the corporation was not enforceable for the same reason. If the corporation had sold the ranch to a third party, Sechrist would have had no recourse against anyone.

Finally, the decisions below conflict, in principle, with **Shaw** v. **Ford Motor Company**, 112 F. Supp. 121; **United States** v. **Isham**, 17 Wall. 496; **Weeks** v. **Sibley**, 269, F. 155; **Frazer** v. **Nauts**, 8 F. (2d) 106; and cases to numerous to mention which follow the principles laid down by this Courts in **United States** v. **Isham**.

CONCLUSION

Wherefore it is respectfully submitted that this petition should be granted.

ROBT. H. RICE
Counsel for Petitioners

MUCKLEROY MCDONNOLD
Of Counsel.

APPENDIX

INTERNAL REVENUE CODE:

Sec. 337—Gain or loss on sales or exchanges in connection with certain liquidations.

(a) General Rule.—If—

(1) a corporation adopts a plan of complete liquidation on or after June 22, 1954, and

(2) within the 12-month period beginning on the date of the adoption of such plan, all of the assets of the corporation are distributed in complete liquidation, less assets retained to meet claims,

then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property within such 12-month period.

* * * * * *

Sec. 453—Installment Method.

(a) Dealers in Personal Property — Under regulations prescribed by the Secretary or his delegate, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit, realized or to be realized when payment is completed, bears to the total contract price.

(b) Sales of Realty and Casual Sales of Personality.—

(1) General Rule.—Income from—

(A) a sale or other disposition of real property,* * * * *

may (under regulations prescribed by the Secretary or his delegate) be returned on the basis and in the manner prescribed in subsection (a).

(2) Limitation.—Paragraph (1) shall apply—

(A) In the case of a sale or other disposition during a taxable year beginning after December 31, 1953, (whether or not such taxable year ends after the date of enactment of this title), only if in the taxable year of the sale or other disposition—

(i) there are no payments, or

(ii) the payments (exclusive of evidence of indebtedness of the purchaser) do not exceed 30 percent of the selling price.

CLEMENS PRINTING COMPANY, SAN ANTONIO, TEXAS

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IN THE

Supreme Court of the United States

No. 895

BOB HINDES and wife, DOROTHY LEE,
PETITIONERS

versus

UNITED STATES OF AMERICA

Appendix to Petitioners' Brief

ROY H. RICE
Counsel for Petitioners

United States Court of Appeals

FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1963

No. 20604

D. C. DOCKET No. 3125 CIVIL

BOB HINDES and wife, DOROTHY LEE,
APPELLANTS,

versus,

UNITED STATES OF AMERICA,
APPELLEE.

Appeal from the United States District Court for the Western District of Texas

Before HUTCHESON, BREITENSTEIN* and BELL,
Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court.

* Of the Tenth Circuit, sitting by designation

January 7, 1964
Issued as Mandate: Jan. 30, 1964

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 20604

BOB HINDES and wife, DOROTHY LEE,
APPELLANTS,

versus

UNITED STATES OF AMERICA,
APPELLEE.

Appeal from the United States District Court for the Western District of Texas.

(January 7, 1964.)

Before HUTCHESON, BREITENSTEIN*, and BELL, Circuit Judges.

BELL, Circuit Judge: This appeal involves federal income taxes for the year 1957. It turns on the right of taxpayers to return the gain from a sale of realty on an installment basis. Title 26 USCA, § 453. The District Court rendered summary judgment in favor of appellee. See **Hindes v. United States**, W.D. Tex., 1963, 214 F. Supp. 583.

Mr. Hindes entered into negotiations for the sale of his ranch in the spring of 1957. He discussed the tax consequences of a sale with his lawyer, and was advised that an installment sale would result

* Of the Tenth Circuit, sitting by designation

in considerable tax savings. The purchaser was not willing to purchase by installments for the reason that the funds with which the purchase was to be made came from an involuntary conversion of other land, and it was necessary that the funds be reinvested in land within a year. Title 26 USCA, § 1033. Mr. Hindes, then, without the knowledge of his lawyer, entered into a written contract of sale with the purchaser for $300,000, and accepted a $5,000 earnest money deposit.

He reported this fact to his lawyer who suggested that a corporation be set up, with Mr. and Mrs. Hindes selling the ranch to the corporation on installments, and with the corporation, in turn, to make the sale to the purchaser for cash. This suggestion was accepted, and the purchaser agreed to take title from the corporation for the same consideration. Tower Farm & Cattle Company, Inc. was chartered under the laws of the State of Texas, and purchased the ranch from Mr. and Mrs. Hindes for $265,000, from which was to be deducted the amount of a first mortgage upon the ultimate sale. This followed the plan agreed upon; Mr. Hindes hoping that this figure would net out more after taxes under the plan than the original purchase price figure of the contract under a direct sale to the purchaser for cash. This amount was to be paid in equal installments over a period of ten years, with interest at four percent per annum, and the indebtedness was represented by an unsecured note. The corporation then deeded the ranch to the ultimate purchaser for $300,000 cash, and simultaneously paid off a $58,574.81 first mortgage.

leaving a net to the corporation of $241,425.19, and a net due taxpayers of $206,425.19. The real estate commission of $15,000, and the first installment to taxpayers was paid at or about this time by the corporation.

Within a few days thereafter, the corporation made an unsecured four percent loan to Mr. Hindes in the amount of $200,000, due five years from date, with interest payable annually.

The incorporators, and sole stockholders of the corporation were the mother and father of Mr. Hindes in the proportion of fifty percent, and his lawyer in the proportion of fifty percent. The corporation was capitalized at $1,000, and they contributed the capital. The lawyer charged no fee and looked to profit from the corporation to be made on the difference between the purchase and sale price for his gain out of the transaction. After the aforesaid payments, and a payment of $5,617.18 on the gain in federal income taxes, plus other miscellaneous payments, the corporation was liquidated with the result that the mother and father received some $6,000, and the lawyer some $6,000 in profits. In the meantime, Mr. Hindes repaid the corporation the sums due under his note and the stockholders, upon liquidation of the corporation, became liable for the remaining installments due taxpayers.

Taxpayers reported the sales price of $265,000 on their income tax return for the calendar year 1957, and elected to report the profit on the installment basis. An agent of the Commissioner of In-

ternal Revenue, upon examination of the return, treated the installment sale as a closed transaction in the amount of $265,000. He was affirmed on administrative appeal except that the selling price was increased by $35,000 to the $300,000 received by the corporation from the purchaser. Having paid the deficiency, and no refund having been forthcoming within the prescribed time, this suit was filed. Taxpayers and the government both moved for summary judgment, and the motion of the government was granted. The granting of this motion is assigned as error, as well as the overruling of the motion of taxpayers for summary judgment. There is an alternative assignment with regard to the additional $35,000 assessment.

The District Court disregarded form and looked to the substance of the transaction and found that the sale was made in fact by taxpayers to the purchaser, with the corporation being used as a mere conduit, and thus the sale was treated as having been made directly. A finding in this regard, based as it was on undisputed facts, to the extent of $265,000 would necessarily follow from the decision of **Commissioner v. Court Holding Company**, 1945, 324 U.S. 331, 65 S.Ct. 707, 89 L.Ed. 981.

The findings of fact and conclusions of law, while harmless, were not necessary in the posture of the case where it was terminated. The hearing was on motions for summary judgment. **Bohn Aluminum & Brass Corp. v. Storm King Corp.**, 6 Cir., 1962, 303 F.2d 425. See also Rules 52 and 56, F.R.Civ.P. The only finding necessary was that there was no genuine issue as to any material fact.

Neff Instrument Corporation v. Cohu Electronics, Inc., 9 Cir., 1959, 269 F.2d 668. However, the findings as made, as well as the record, demonstrate that there was no dispute as to the facts as they related to the $265,000 sale by taxpayers to the corporation, and no other inference save that reached by the District Court could be drawn, and no other conclusion reached as to that amount.

On the other hand, the evidence is in sharp dispute as to whether the additional $35,000 received by the corporation, should be included as a part of the substance of the transaction, and assessed as having been received by taxpayers. The mere fact that both appellants and appellee moved for summary judgment does not warrant the grant of either motion if the record reflects a genuine issue of fact. **Chambers & Company v. Equitable Life Assurance Soc.**, 5 Cir., 1955, 224 F.2d 338; **Walling v. Richmond Screw Anchor Co.**, 2 Cir., 1946, 154 F.2d 780, cert. den., 328 U.S. 870, 66 S.Ct. 1383, 90 L.Ed. 1640; 6 Moore's Federal Practice, p. 2092; and 3 Federal Practice and Procedure, Barron and Holtzoff, (Wright Ed.), § 1239.

It appears that a portion of the $35,000 went to pay the real estate commission due, and another portion went to pay federal income taxes, while the substantial portion of the remaining sums went to the stockholders of the corporation on liquidation. To be sure, an unraveling of that which the taxpayers set in motion, and final disposition may not be without difficulty but that is the office of the hearing on the merits where, as respects the difference of $35,000, an issue of fact remains.

Kennedy v. Silas Mason Co., 1948, 334 U.S. 249, 68 S.Ct. 1031, 92 L.Ed. 1347; and **Winter Park Telephone Co. v. Southern Bell Telephone & Telegraph Company**, 5 Cir., 1950, 181 F.2d 341.

The judgment of the District Court must be reversed, and the case remanded for consideration on the merits of the question of whether the additional $35,000 was properly assessed to taxpayers as having been a part of the substance of the transaction. A summary judgment to the extent of the $265,000 would be in order on remand.

REVERSED and REMANDED for further proceedings not consistent herewith.

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1008

[illegible] and DOROTHY LEE HOYLE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ARCHIBALD COX,
Solicitor General,

LOUIS F. OBERDORFER,
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CONCLUSION

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 895

BOB and DOROTHY LEE HINDES, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The district court's findings of fact and conclusions of law (R. 83-86) are reported at 214 F. Supp. 583. The opinion of the court of appeals (R. 211-216) is reported at 326 F. 2d 150.

JURISDICTION

The judgment of the court of appeals was entered on January 7, 1964. The petition for a writ of cer-

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"R." references are to the printed record in the proceedings before the Court of Appeals for the Fifth Circuit.

tiorari was filed on March 7, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district court correctly found that a corporation had been created and used as a conduit for the sale of petitioner's ranch solely in order to reduce taxes by transforming a cash transaction into an installment sale of the property.

STATUTE INVOLVED

Internal Revenue Code of 1954:

SEC. 453. INSTALLMENT METHOD.

(a) *Dealers in Personal Property.*—Under regulations prescribed by the Secretary or his delegate, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

(b) *Sales of Realty and Casual Sales of Personalty.*—

(1) *General rule.*—Income from—

(A) a sale or other disposition of real property, or

(B) a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of

the taxable year) for a price exceeding $1,000,

may (under regulations prescribed by the Secretary or his delegate) be returned on the basis and in the manner prescribed in subsection (a).

* * * * *

(26 U.S.C. 1958 ed., Sec. 453.)

STATEMENT

In the spring of 1957 petitioner[2] entered into negotiations for the sale of his ranch to F. B. Sechrist. Petitioner discussed with his attorney the tax consequences of such a sale and was advised that an installment sale would result in considerable tax saving. The purchaser was unwilling to purchase by installments, however, and petitioner entered into a written contract of sale for $300,000 cash on which a $5,000 earnest money deposit was paid by Sechrist (R. 14, 15, 19, 23, 25, 27-31, 83-84, 98).

Petitioner's attorney thereafter suggested that the tax saving could be achieved by creating a corporation to which petitioner would sell his ranch on an installment contract, and that the corporation could then sell the ranch to Sechrist for cash. Sechrist agreed to take title from the corporation on the promise that the property would be sold to him at the $300,000 cash price (R. 13, 19-20, 23, 25-26, 84).

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[2] Although both Mr. and Mrs. Hindes are petitioners in this case because they filed a joint 1957 tax return, we use "petitioner" with reference to Mr. Hindes, who alone engaged personally in the relevant transactions.

Pursuant to this plan, the Tower Farm & Cattle Company, Inc. ("Tower") was chartered under Texas law. The incorporators and sole stockholders were petitioner's mother and father and his attorney (R. 11; 14, 26-27, 79, 84, 97). Petitioner then sold his farm to Tower for a total of $265,000, of which approximately $20,000 was paid in cash with the balance due over a period of ten years. Petitioner did not retain a deed of trust or lien of any kind to secure the unpaid balance of the purchase price (R. 20-21, 32-37, 84-85).

Approximately a month later, Tower deeded the farm to Sechrist for $300,000 cash. A $58,000 first mortgage was paid by Tower, in addition to a real estate commission of $15,000. At this time Tower also paid the first $20,000 installment on the note held by petitioner (R. 23-24, 68-76, 85, 99, 101-102, 110-111). Six days after these transactions, Tower made an unsecured 4 percent loan to petitioner in the amount of $200,000. The note contained none of the standard provisions regarding default which are customarily included in such promissory notes (R. 21, 42, 85).

The Tower corporation engaged in no other business (R. 196). It was dissolved in January 1959 (R. 154, 193), at a time when petitioner owed Tower approximately $180,000, and Tower owed petitioner approximately $165,000 (R. 154). Petitioner's attorney realized a profit on this arrangement of approximately $6000 (R. 194-195).

In their 1957 joint tax return, petitioners treated the sale as an installment transaction under Section 453(b) of the Internal Revenue Code of 1954 (R. 41). The Commissioner disallowed this claim and treated the sale as having been made by petitioner directly to Sechrist for cash.[1] Petitioners paid the assessed deficiency—which also included adjustments other than the one relevant in this case—and sued for a refund in the district court. Cross-motions for partial summary judgment on the present issue were filed, and the district court granted the government's motion (R. 86-87). Petitioners' other claims were settled, and final judgment was entered (R. 200).

The court of appeals held that the district court was correct in treating the sale as a direct one between petitioner and Sechrist with the corporation being a mere conduit used for tax avoidance purposes. It concluded that summary judgment was warranted as to the $265,000 which was to be received by petitioner from Tower, but it held that there was a genuine issue of fact as to whether the additional $35,000 received by the corporation from Sechrist should be considered income to petitioner. Consequently, it reversed and remanded the case for trial on that issue of fact.

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[1] The revenue agent who originally audited the return treated only $265,000 as received by petitioner; on administrative appeal it was determined that the full original sale price of $300,000 should be treated as having been received in 1957. It was with reference to this $35,000 difference that the court of appeals remanded the case for trial.

ARGUMENT

The decision below is correct and there is neither a conflict of decisions nor any other reason for review by this Court.

The decision of the court of appeals followed principles announced in this Court's opinion in *Commissioner* v. *Court Holding Co.*, 324 U.S. 331. In that case the taxpayer corporation negotiated for and reached an oral agreement for the sale of its assets. On being advised that the negotiated transaction would result in a substantial tax, the corporation distributed its assets in a liquidating dividend, and the sale of the assets was carried out by the corporation's stockholders. In sustaining the Tax Court's conclusion that the sale had been made, in substance, by the corporation, this Court said, in language particularly appropriate here (324 U.S. at 334):

> The incidence of taxation depends upon the substance of a transaction. The tax consequences which arise from gains from a sale of property are not finally to be determined solely by the means employed to transfer legal title. Rather, the transaction must be viewed as a whole, and each step, from the commencement of negotiations to the consummation of the sale, is relevant. *A sale by one person cannot be transformed for tax purposes into a sale by another by using the latter as a conduit through which to pass title.* To permit the true nature of a

transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress. [Emphasis supplied.]

In the present case petitioner sought to obtain advantageous installment-sale tax treatment on the disposition of his ranch notwithstanding the purchaser's refusal to buy on such terms. On the advice of petitioner's attorney, a corporation was created with no other object than to act as an intermediary and give the purchaser the benefit of a cash purchase while allowing petitioner the tax advantages of an installment sale. Indeed, the evidence supporting the district court's conclusion that the Tower corporation was nothing more than a conduit is far more persuasive here than was the analogous evidence in *Court Holding*. For, as this record demonstrates, (1) a *written* contract of sale between petitioner and Sechrist was first executed (R. 27-31) (compare 324 U.S. at 334), (2) all the persons involved with the second agreement conceded that Sechrist expressly conditioned release of that contract upon a promise that he could make the same purchase from the corporation (R. 19-20, 23, 26), (3) petitioner obtained all the benefits of a cash sale by "borrowing" $200,000 from the corporation promptly after it received the purchase price from Sechrist, and (4) the corporation engaged

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Since the corporation paid the $58,000 mortgage and $15,000 in brokers' commissions, it netted $227,000. The $200,000 "loan" plus the $20,000 down payment transferred to petitioner substantially all the receipts of the sale.

in no other business and was dissolved as soon as it appeared that its continued existence would be burdensome. The corporation in this case was, like the corporation in *Gregory* v. *Helvering*, 293 U.S. 465, 469, "nothing more than a contrivance to the [tax avoidance] end last described. It was brought into existence for no other purpose; it performed, as it was intended from the beginning it should perform, no other function. When that limited function had been exercised, it immediately was put to death."

There is surely no significance to the fact that petitioner did not own the Tower corporation. His relationship with the corporation's stockholders, who were petitioner's parents and his attorney, makes it obvious that the corporation was to act solely at petitioner's bidding and for his benefit. Nor is the arrangement saved merely because the attorney was to recover his fee from the corporation's "profits." In substance, this was nothing more than a payment to the attorney of a fractional share of the total receipts of the sale.

Nor is there any reason of policy to grant petitioner the benefit of installment-sale treatment on the proceeds of the sale. The installment sale provision "was designed to allow a taxpayer in the case of installment sales to spread the profit over the whole period during which payments were made * * *." *S. & L. Bldg. Corp.* v. *Commissioner*, 60 F. 2d 719 (C.A. 2), reversed on other grounds, 288 U.S. 406. In the present case, petitioner actually obtained the benefit of substantially all of the purchase price at the time the sale was made to Sechrist.

The district court properly held, therefore, that it was all to be treated as having been received in 1957.[5]

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

LOUIS F. OBERDORFER,
Assistant Attorney General.

DAVID O. WALTER,
STEPHEN B. WOLFBERG,
Attorneys.

APRIL 1961.

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[5] Petitioner contends that the *Court Holding* case has been nullified by Section 337 of the 1951 Code (Pet. 5). That section may have made the *Court Holding Co.* type of transaction unnecessary to achieve the tax benefits sought in that case, but it does not affect the authority of the principles applied in that case to issues such as the one presented here.

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